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Paper No. 6

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In re Application of  
Chen et al.  
Application No. 09/848,767  
Filed: May 4, 2001  
Attorney Docket Number: 0050.2003-001

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JUN 06 2002

OFFICE OF PETITIONS

DECISION REFUSING STATUS  
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR §1.47(a), filed February 5, 2002, certificate of mailing date January 2, 2002.

The petition is dismissed.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR §1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR §1.136(a).

The above-identified application was filed on May 4, 2001, with a partially executed oath or declaration and naming Chen, Perelman, Zhang, Dasari and Feld as joint inventors.

Accordingly, on July 2, 2001, a "Notice to File Missing Parts of Application" was mailed, requiring the basic filing fee, additional claim fees, an executed oath or declaration and a \$130.00 surcharge for its late filing.

In response, on February 5, 2002, applicant submitted the basic filing and additional claims fees, a \$130.00 surcharge for late filing oath or declaration fee, the present petition and a four (4) month request for extension of time to make the petition timely.

A grantable petition under 37 CFR §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and, (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) and (2) as set forth above.

Where an inventor cannot be reached as in the case of inventor Chen rule 47 applicant must demonstrate diligent efforts were made to find or reach a non-signing inventor. See MPEP 409.03(d). The statements made in the petition do not illustrate "diligent effort" was made to locate Mr. Chen. Although rule 47 applicant indicates MIT and joint inventor Dasari were contacted to ascertain the address of inventor Chen, these

actions are not sufficient to establish diligent effort was made to locate inventor Chen. Did rule 47 applicant search for inventor via an electronic database? Did applicant ask the other joint inventors or colleagues for the address of inventor Chen? Applicant should present a signed statement of facts from a person that has first hand knowledge of the diligent efforts made to locate the non-signing inventor. Applicant should present copies of documentary evidence that support a finding that the non-signing inventor could not be found or reached and the steps taken to locate the non-signing inventor. Accordingly, Rule 47 applicant failed to show or provide proof the inventor can not be reached.

Although rule 47 applicant submitted a declaration with the petition, the declaration does not comply with 37 CFR 1.63. Specifically, Ramachandra Dasari and Michael S. Feld made changes to the declaration without initialing and dating the changes.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Commissioner for Patents  
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By FAX:                   (703) 308-6916  
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Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

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